

TRIAL OF Col. Aaron Burr.

Debate on the motion for a writ of subpoena duces tecum continued.

(Mr. Randolph's Speech Continued.)

It is not to be supposed that General Wilkinson will do many things, rather than disappoint the wonder-seizing appetite of America, which for months together he has been gratifying by the most miraculous actions. If I am not mistaken, I have seen it in some of the public prints that he is no longer the Vice-Governor of the upper Louisiana, and if I may be indulged with the slightest power of prophecy I may predict that this same General Wilkinson, who has been acting in the cities of New Orleans with plots and conspiracies will be before many weeks only secure in the capacity of a private citizen. I shall not say that General Wilkinson would commit perjury; let me not be understood as making such an assertion; but if I know human nature; if I understand the feeling of the human breast; if I have the slightest knowledge of those principles which govern the mind of man, I may be allowed to affirm that every feeling would be asleep in his breast if he did not use every exertion in his power for the conviction of Col. Burr. Upon the conviction of Col. Burr upon the guilt I say of Col. Burr, depends the innocence of Gen. Wilkinson. If Col. Burr is proved guilty, then indeed General Wilkinson may stand acquitted with many of his countrymen; but if Col. Burr be not found guilty, the character, the reputation, in short every thing that deserves the name of integrity will be gone forever from Gen. Wilkinson. Sir, in that event, I say in the event of Burr's acquittal as sure as man is man, storms and tempests will cover the western glory of Gen. Wilkinson and gather darkness all around him. We have therefore the justice cause to scrutinize this gentleman's deposition. We have the strongest reasons to examine this gentleman's character and to trace him in his most confidential walks. From his letters we have already had some glimpses of him; but I should wish as I have said to have him confronted with himself. I mean to have his correspondence with the President of the United States exposed to whatever statement he may deliver here—I shall therefore suppose by way of illustration, that the President was here and certain questions were put to him. The President certainly could not dispense with an answer to these questions. Much as I respect the illustrious character of the President of the United States, yet I should begin to imagine that the sheet anchor of our government was gone if the President could be executed more than any other individual before this court for answering any questions which might be put to him. It is really most extraordinary that these gentlemen should tell us after arriving in the porch of the temple that we shall not go into the sanctum sanctorum. That we are at liberty to know part of the correspondence which has taken place between Gen. Wilkinson and the President of the United States, but not to know the whole.

The gentleman for the prosecution has to day, sir, given us an eulogium upon himself and his associate friends. He has pledged to us the zeal and the anxiety he has had for the production of those papers, and has assured us that he has already taken means for having them here. I thank the gentleman for his exertions, but at the same time I must beg leave to remark, the equal zeal with which he and his friends combat our application. If Mr. Burr were now asking you for these papers, without shewing any probable cause that they were material, this indeed would be a wanton, womanish, feverish curiosity; but it is no such curiosity; we have shewn in the fullest manner, that they are material and of the first importance. It is said by the production, that Gen. Wilkinson, that huge Atlas, on whose mighty shoulders the American world is sustained, is wished to be represented as a man in whom confidence ought not to be placed. But I say, if the production of these papers were to effect the annihilation of General Wilkinson, that I hope and believe no other visible chain in the creation would be produced, but that portion of space at present, occupied by his material body. How can the rank and safety of General Wilkinson be concerned in the production of these papers. Gen. Wilkinson is only an organ in the hands of government. As to his glory I believe, its meridian splendor is set, and that he will be no longer worshipped as the political Messiah of America; but even if he were crucified, I trust it would make no era in our time. Suspicion at all events belongs to him. He stands in that character which is always regarded as odious, that of an approver. He has confessed himself guilty of the most heinous of crimes, for the purpose of entrapping others, of rendering others equally infamous as himself.

We are told that our motion goes to several state secrets. That confidential characters are to be brought into view. State secrets! the very name strikes me with horror—I have heard one of the gentlemen concerned pronounce the idea, and I shall not again be the means of recalling the principle. Sir, I will not say that there ought not to be a limitation with respect to the production of state papers. But in what character is the name of Gen. Wilkinson inscribed in the roll of fame, to entitle his actions to be concealed. Is the safety of this country to be endangered by calling upon him as a witness, who is known and declared to be one of the arch witnesses of this prosecution. Is the national safety to be endangered by this? A nation stand upon this? A nation which ought only to look to the Almighty for its rule? Shall they be considered as in danger, though this motion be granted? Should they be in danger though General Wilkinson were given up to be buffeted. I should be very unwilling indeed, that a single name should be unnecessarily exposed; but is one man's fortune, character and life, to be brought into jeopardy, in order to conceal the names of others. Was this to be the shield under which General Wilkinson was to be screened? Was the executive bureau to be made a sanctuary of scandal, to protect the fame of General Wilkinson and when opened at some future period, to display to the citizens of this country, a tale perhaps, as horrid as many of those which the thread book of France has unveiled.

The revealing of confidential secrets, has also been objected to. Two cases of this nature were yesterday ably detailed by the Counsel associated with me. The case of Lord Barrington, and the Surgeon, whose evidence was given in the trial of the Duchess of Kingston; but, sir, I have seen within the walls of this house, a case still more affecting; a case if ever

confidential secrecy was to be plead, it ought then to have been sustained. This, sir, was the case of a young Boy, of thirteen years of age, who was arraigned at this bar for a criminal offence—His infant mind and the feelings of his heart, had been unburdened to his father alone. He led by filial affection, was anxiously at ending at the side of the Boy at the issue of the trial. The Attorney for the state, after fruitlessly examining all the evidence for the prosecution, at length darted his keen and penetrating eye upon the distressed parent. He immediately made an application to the Court for his deposition. The close ties of father and son, and the nature of confidential secrecy, were in vain plead by the Attorney for the accused. The Court compelled the father to give testimony against the son, who on this testimony alone, was convicted although for the honor of Virginia, the records of the state are not blotched with the execution of the sanguinary sentence. But is General Wilkinson the child of the President of the United States—Is the President to be viewed as the father of General Wilkinson. Is Mr. Jefferson to be placed in the same situation with respect to James Wilkinson, as the parent I have mentioned with regard to the boy. Are the hearts of Mr. Jefferson and General Wilkinson, connected by the same tender ties of sympathy, as those of a father and son.

Latest Proceedings.

SATURDAY, JUNE 20.

IMMEDIATELY on the meeting of the court, Mr. Hay produced a letter to him from the President of the United States, enclosing authenticated copies of the orders issued from the Departments of War and the Navy relative to the suppression of Aaron Burr's conspiracy. He observed that the court would recollect the former letter from the President mentioned the circumstance of his having entrusted to Mr. Rodney, Gen. Wilkinson's letter, which Col. Burr now demands to be produced; that the President had written to Mr. Rodney to return it, that it might be furnished to the court; but since that gentleman, (as he understood,) had lately left Wilmington in Delaware, on his way to the City of Washington, the President's letter by the mail might have passed him on the road. He doubted not, however, that, as soon as possible, the letter in question would come to hand.—The President's letter and the documents inclosed were received, as his return, in part, to the writ of subpoena duces tecum, and are as follows.

Sir, Washington, June 17, 1807.

IN answering your letter of the 9th, which desired a communication of one to me from Gen. Wilkinson, specified by its date, I informed you in mine of the 12th, that I had delivered it with all other papers respecting the charges against Aaron Burr, to the Attorney General when he went to Richmond, that I had supposed he had left them in your possession, but would immediately write to him, if he had not forwarded that particular letter without delay. I wrote to him accordingly on the same day, but having no answer, I know not whether he has forwarded the letter. I stated in the same letter that I had desired the Secretary at War to examine his office in order to comply with your further request to furnish copies of the orders which had been given respecting Aaron Burr and his property; and in a subsequent letter of the same day, I forwarded to you copies of two letters from the Secretary at War, which appeared to be within the description expressed in your letter. The order from the Secretary of the Navy, you said you were in possession of.

The receipt of these papers had, I presume, so far anticipated and others this day forwarded will have substantially fulfilled the object of a subpoena from the District Court of Richmond, requiring that those officers and myself should attend the court in Richmond, with the letter of Gen. Wilkinson, the answer to that letter, and the orders of the Departments of War and the Navy therein generally described. No answer to Gen. Wilkinson's letter, other than a mere acknowledgment of its receipt in a letter written by myself or any other. To these communications of papers, I will add, that if the defendant supposes there are any facts within the knowledge of the heads of departments, or of myself, which can be useful for his defence, from a desire of doing any thing our situation will permit in furtherance of justice, we shall be ready to give him the benefit of it, by way of deposition through any persons whom the court shall authorize to take our testimony at this place. I know indeed Mr. Hay, that this cannot be done but by consent of parties, and I therefore authorize you to give consent on the part of the U. S. Mr. Burr's consent will be given of course if he supposes the testimony useful.

As to our personal attendance at Richmond, I am persuaded the court is sensible that paramount duties to the nation at large control the obligation of compliance with their summons in this case, as they would, should we receive a similar one to attend the trials of Blennerhassett and others in the Mississippi territory, those in prison at St. Louis, and other places on the Western waters, or at any place other than the seat of government. To comply with such calls would leave the nation without an executive branch, whose agency nevertheless is understood to be so constantly necessary, that it is the sole branch which the constitution requires to be always in function. It could not then mean that it should be withdrawn from its station by any co-ordinate authority. With respect to papers, there is certainly a public, and a private side to our offices. To the former belong grants of land, patents for inventions, certain commissions, proclamations, and other papers patent in their nature. To the other belong mere executive proceedings. All nations have found it necessary that, for the advantageous conduct of their affairs, some of these proceedings at least, should remain known to their executive functionary only. He of course, from the nature of the case, must be the sole judge of which of them the public interest will permit publication. Hence under our constitution in requests of papers from the legislative to the executive branch, an exception is carefully expressed as to those which he may deem the public we have may require not to be disclosed, as you will see in the inclosed resolution of the House of Representatives which produced the message of Jan 22, respecting this case. The respect mutually due between the constituted authorities in their official intercourse, as well as sincere dispositions to do for every one what is just, will always ensure from the executive, in exercising the duty of discrimination confided to him, the same candor and integrity to which the nation has in like manner trusted in the disposal of its judiciary. Considering you as the organ, for communicating these sentiments to the court, I address them to you for that purpose, and salute you with esteem and respect.

TH: JEFFERSON

I CERTIFY that the annexed is a true copy from the records, in the office of the

department of the navy of the United States, of the letter from the secretary of the navy to Capt. John Shaw, dated, 20th December, 1806.

In faith whereof I, Robert Smith, secretary of the navy of the United States of America, have signed these presents, and caused the seal of my L. S. office, to be affixed hereto; at the City of Washington, this 17th, day of June, Anno Domini 1807, and in the 31st year of the independence of the said states.

RT: SMITH.

Secretary of the Navy.

Registered,
CH: W. SOLDBOROUGH,
Chief Clk. N. D.

(Copy.)

Navy Department, 20th Dec. 1806.

SIR, A MILITARY expedition formed on the western waters by Col. Burr, will soon proceed down the Mississippi, and by the time you receive this letter, will probably be near New-Orleans. You will by all the means in your power, aid the army and militia in suppressing this enterprise. You will with your boats take the best position to intercept and to take and if necessary to destroy the boats descending under the command of Col. Burr or of any person holding an appointment under him. There is great reliance on your vigilance and exertions.

I have the honor to be,

Sir, your most obt. servt.

(Signed,) RT: SMITH,
Capt. JOHN SHAW,
Or the commanding naval officer at New-Orleans.

War Department, Dec. 20, 1806.

SIR, "THERE is reason for believing that an association of unprincipled, ambitious and deluded men, has been formed for purposes hostile to the laws and peace of the United States, and that they are now descending the river Ohio and Mississippi, in considerable bodies, with large quantities of provisions and military stores, and that New-Orleans will be the place of general rendezvous, or perhaps attack in the first instance. You will, therefore, in concert with the governor, make every possible exertion in your power for defeating their views, and for securing both men and stores; especially their leaders.

The gun boats will receive orders by this conveyance to take post up river.

The artillery lately purchased from the French government will probably be aimed at, as well as other military apparatus; indeed, the capture of New-Orleans and all public property at that place, is presumed, by many, to be the first object."

I am very respectfully,

Sir, your obt. servant,

(Signed) H. DEARBORN,
Lt. Col. CONSTANT FREEMAN.

I CERTIFY that the within is a true copy from the records of the department of war.

Given under my hand and the seal of the war office of the United States, L. S. this seventeenth day of June, one thousand eight hundred and seven.

H. DEARBORN,

Secretary of War.

Mr. Randolph proceeded to make his motion that a rule be made against Gen. Wilkinson, to shew cause wherefore an attachment should not be awarded against him for a contempt of the court. After some preliminary observations, he was about to introduce the affidavits of James Knox and Chandler Lindsley, when Mr. Hay objected to the reading of those affidavits, on the ground that they had been written by the counsel of Col. Burr; that they might have been dictated by the witnesses. He said he did not doubt that the gentlemen intended to act fairly and honorably on the occasion, and had designedly inserted nothing improperly. But he supposed the course of the business had been this:—The witnesses went to Col. Burr, and told him their tale concerning Gen. Wilkinson; his counsel then drew their affidavits, and delivered them to the witnesses to be sworn to. He observed that, where affidavits were thus taken, they ought not to be received in any case, tho' the court was satisfied of the integrity and fairness of those by whom they were taken; and cited 5 Term. Rep. 403, in which it was decided that an affidavit sworn to before the attorney of the party was not admissible; observing that here the objection was much stronger than in that case, because these affidavits were not merely sworn to before the counsel of the person on whose behalf they were exhibited, but had been penned by them.

Mr. Baker one of the counsel of Col. Burr declared that he wrote the affidavit of Chandler Lindsley at his request; that the witness had brought him a paper written by himself as the substance of his affidavit, requesting him to draw it off for the purpose of putting it in proper form and correcting its grammatical inaccuracies; which he had accordingly done.

Mr. M' Rae observed there was less difficulty in the objection, because the witnesses were before the court. If they had been at a distance, said he, we would have waived it; that it might not seem that we feared their affidavits, or wished to keep their testimony from being heard. The truth is we have no such fear: we wish nothing to be concealed; but as the witnesses are here, we insist on their being examined openly before the court; on the very ground of the objection, made by the counsel of Aaron Burr, to affidavits offered by us. There, although the witnesses whose affidavits were offered were at a great distance, they insisted that they should not be read, and called upon us to produce the persons themselves. Here, no good reason can be given for reading these affidavits; since the witnesses are present, and if the gentlemen wish the whole truth to come out, they will consent to the proposal of examining them viva voce.

Mr. Wickham made several observations against the proposal; the most important of which were, that the usual practice on collateral motions, (such as for rules to shew cause, for continuances, and for attachments,) is to exhibit affidavits in writing, instead of examining witnesses viva

voce; and that those affidavits are generally written, under the directions of the witnesses, by the agent of the party on whose behalf they are taken; magistrates not being willing to submit to the drudgery; and witnesses frequently too ignorant to do it themselves.

Col. Burr said, it would be agreeable to him if the witnesses were examined in open court; but that he had thought it would have been disrespectful to the court to vary from the established practice.—The origin of this business, he said, was this. Mr. Knox complained to me of ill-usage from Gen. Wilkinson, and enquired what step he ought to take—it occurred to me at first, to refer him to Mr. Hay the district attorney; but, on reflection, I supposed Mr. Hay not the most suitable person, under present circumstances. His affidavit was therefore taken by one of my counsel. I believe Knox thought the mode of proceeding was for him to make his complaint in person to the court.

Mr. Wirt. The reason of the rule that affidavits are admissible to be read as evidence on motions is founded in expediency; and the reason ceasing the rule ought to cease also. The enquiry then ought to be, whether it is more expedient in this case to make use of the affidavits, or of the witnesses themselves. We wish to come at the truth. The counsel of Aaron Burr, we hope, wish to come at the truth. I know we do: we wish nothing enveloped in darkness and mystery. Where a witness is absent, or the time of the court would be unnecessarily consumed in his examination, it is expedient to admit his affidavit to be read, on a motion for an attachment, or for a continuance; but expediency here demands a different course. Which is best to establish facts? A written affidavit taken ex-parte, or viva voce evidence? When an affidavit is introduced, the question is important, was it written by the witness himself, or by another person who received general directions from him? In this case, the latter course was pursued. The witnesses' words were not put down, but words written by persons under a particular bias. Is it likely that an affidavit, colored by passing through the mind of a prejudiced person, will be better adapted to the discovery of truth, than the witness himself?

Mr. Botts said that Col. Burr had no objection to examining the witnesses viva voce.

The Chief Justice said, "the objection to reading the affidavits is not good in point of law: the reason of the rule that affidavits are received on motions of this nature is to prevent the time of the court from being unnecessarily occupied; but that reason does not at present apply; since the court is waiting for the grand jury, and is not occupied with civil business." He therefore directed the witnesses to be examined viva voce.

Mr. M' Rae observed that, as this was a motion of consequence to the respectable gentleman (Gen. Wilkinson) whose character was attacked, he wished him to be present; that Gen. W. was then before the grand jury, and a short delay would enable him to be present. It was possible facts of some moment were known to him, and not to the counsel; and he might suggest important questions to the witnesses. Mr. M' Rae also contended that witnesses ought to be examined on both sides, that the whole truth might be known.

A dispute of some length ensued; the counsel for Col. Burr contending, that as this was only a motion for a rule to shew cause; neither Gen. Wilkinson nor his counsel ought to be heard upon it; that, hereafter, when he came to shew cause against issuing the attachment, he would be permitted to exhibit evidence on his part, and to cross-examine the witnesses against him; but not until then; and the counsel for Gen. Wilkinson arguing that the court ought to prefer a full to a partial view of the evidence; that his presence would aid the court in asking the proper questions; and that, altho' he and his counsel were not legally in court, they had a right to be heard as amici curiae; that, as to the right of introducing witnesses in his favor at this stage of the business, it was the practice, where the party, (against whom an attachment was requested,) was not present; to serve him with a rule to shew cause; but, where he was present with his witnesses, he had a right to shew cause immediately.

In the end, it was consented, that the motion should be at once for an attachment, instead of a rule to shew cause; and that it should be postponed till Monday, unless Gen. Wilkinson's examination by the grand jury should be sooner finished. The time of the grand jury on Friday and Saturday was entirely occupied in examining that gentleman.

MONDAY, JUNE 22.

Mr. Randolph desired James Knox to be called, and said he was ready to proceed in his motion.

Mr. M' Rae wished the motion to be farther postponed, as Gen. Wilkinson was still engaged in giving his testimony to the grand jury.

Mr. Botts objected to a farther postponement; saying, that a spirit of accommodation on their part had subjected them to great inconvenience from delay; that it was a hardship on Col. Burr; and therefore he thought it fair to retract the consent he had given on Saturday; that perhaps they might be delayed three or four days in waiting for Gen. Wilkinson's discharge from the grand jury; that, after his examination was finished, the grand jury would probably soon make their report; if "no true bill" should be found, Col. Burr would not wish to be kept here to prosecute the motion merely to gratify spite against Gen. Wilkinson; that that gentleman was ably represented by counsel, and therefore no necessity for delay existed. He concluded with observing that they would go on with their motion for a rule to shew cause.

In this he was supported by Col. Burr in a short speech; which he ended, however, with saying that, if the gentleman would name a time for proceeding with the motion at any rate, though Gen. Wilkinson should not be present, he would agree to it.

Mr. Wirt said they could not appoint a particular time; but were willing to take up the business, at any moment when the General should be able to be present; that the favor conferred by the spirit of accommodation professed by Col. Burr and his counsel was wiped away by their reproaching him and his coadjutors with it; that they needed not their consent, however, since

Gen. Wilkinson stood in the same situation, at present, as if the rule had been entered, and he was now to shew cause, in which case the court would certainly allow him time until the grand jury should discharge him.

The Chief Justice declared that the court considered him as standing in that situation, and entitled to time accordingly. He proposed, however, to prevent unnecessary delay, that Gen. W. should be furnished with copies of the affidavits against him, and should prepare interrogatories to be put to those witnesses, who should be examined to-morrow, reserving to the General the right of still farther cross-examining them, after the grand jury shall have dismissed him; and to his counsel the right of introducing immediately other witnesses to controvert their testimony. He observed that the court, from their view of the affidavits, thought there was no necessity for Gen. Wilkinson's presence at all; but, as the counsel for the United States desired it, the arrangement proposed by the court would answer every purpose contemplated by them, and enable the business to progress.

This arrangement was acquiesced in on both sides; and, accordingly, the witnesses are to be examined on Tuesday, to which day (11 o'clock) the court adjourned.

TUESDAY, JUNE 23.

The motion for an attachment against Gen. Wilkinson, was made by Col. Burr and his counsel; the General (whose examination before the grand jury, we understand, is finished) being present in court.

James Knox was the only witness introduced in support of the motion; and we are happy to inform the public that, (such as his testimony was,) it contained nothing which ought in the smallest degree to injure the reputation of Gen. Wilkinson. Mr. Gaines the Commandant at Fort Stoddard, and Mr. Graham, Secretary of the Territory of Orleans, were examined on the part of the General, and very clearly and satisfactorily proved the propriety of his conduct, in every thing relating to the charge of oppressing the said Knox, and of bringing him by force to the city of Richmond, for the purpose of compelling him to give evidence against Col. Burr. The substance of the testimony of those three witnesses shall be inserted in the next Argus.

The arguments of counsel on both sides will commence to-day at 11 o'clock.

FOR THE ARGUS.

IN the voluminous discussions and publications which have arisen out of the contemplated separation of the Western from the Atlantic country, none has more amused me than a letter from New-Orleans, which has appeared in all the Federal papers, & in which it is stated that 600,000 of them, entered the camp of Gen. Wilkinson on the Sabine. This story is something of the cast of the arguments of the Baltimore Demosthenes, which to use one of his own polished figures, cuts its own throat. Was this money given to encourage an invasion of Mexico or to discourage it? Was it given to favor or to resist Burr? If it is said it was given to favor Burr, we find the bait did not take. If it is said that it was to oppose Burr, then there could be no great crime even if money was taken by one power in peace with another, for the purpose of preserving both from war and desolation. However, this would be conceding even too much. The Spaniards are not quite so lavish of their dollars, and the entrance of mules laden with dollars into the American camp could scarcely have been concealed from Col. Cushing and the officers of the army. It is a good tough story, however, and happens to be surrounded by a sufficient quantity of extraneous matter to render it amusing for the hour. The government of the U. States, it is to be supposed, are well apprized of the source whence this little episode proceeded, and of many other contradictory accounts relative thereto.

There is another publication, that of a debate in the Orleans Legislature, particularly the speech of a Dr. Watkins in the House of Assembly there. The debate has been circulated by post to all parts of the continent. Of Dr. Watkins's patriotism I say nothing, I only wish to submit to consideration the regularity of his mind and the consistency of his speeches at different times.—For example, he says that "Gen. Adair, the day he reached Orleans had stated that he left Natchez the 22d Dec. and that Burr was then there with two flat boats destined for Orleans." Yet this same Dr. Watkins at the house of James Carrick, Esqr. in Orleans, a few days after Gen. Wilkinson had arrived there, declared in the most unreserved manner, and believe in the hearing of Wilkinson, that—"It was unwise to attempt fortifying the city of Orleans, for if the people expected from above should come down, the General with the force he had, could not resist them, and that he would not find a man in Orleans who would assist him: that the flames of revolution were so widely extended, it was not in the power of government to extinguish them, and that they deserved it from their imbecility and their connivance at Miranda's expedition; for that every child in the streets who could lisp, would tell you they did connive at that expedition. That we might talk of disconcerting the Mississippi, but they were to be found on the Atlantic also."

These were the contradictory sentiments of the gentleman who was at the same time also the Mayor of Orleans and Speaker of the House of Delegates. Yet this man who said in Wilkinson's hearing that rebellion was so extended that not a man would assist in repelling treason and civil war—when Wilkinson had resisted and seized on the traitorous agents, could talk as he did. In this way it is that dishonesty always acts.—When Dr. Bollman and Count Wylly, were called upon to give evidence, the former could not accept a pardon because he had committed no crime, and could not be called upon to give evidence, because his evidence would subject him to the guilt of felony—and Count Wylly could not be called upon to decypher an irrelevant letter, because if he did decypher it, the letter might involve him in the guilt of felony.

MONDAY.

DRAMATIC INTELLIGENCE.

The amusement furnished by the celebrated Low Comedian from Baltimore, has had a fatal effect on the actors at the other house. Perhaps it was in consequence that